

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**EQUISTAR CHEMICALS, LP
NPDES Permit No. 2326112**

**ADMINISTRATIVE CONSENT
ORDER
NO. 2015-WW-06**

TO: Christopher Cain
Site Manager
Equistar Chemicals, LP,
3400 Anamosa Road
Clinton, IA 52732

I. SUMMARY

This administrative consent order (Order) is entered into between Equistar Chemicals, LP (Equistar) and the Iowa Department of Natural Resources (DNR) for the purpose of addressing effluent discharge violations which occurred in September of 2014.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Russell Royce
DNR Field Office #6
1023 W. Madison
Washington, IA 52353
Ph: 319-653-2135

Relating to this Order:

Jon C. Tack
Legal Services Bureau
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph. 515-725-8239

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Equistar owns and operates a chemical production facility in Clinton, Iowa. The facility produces chemicals such as ethylene, propylene, polyethylene and polymers from feed stocks such as ethane and propane. Equistar operates an activated sludge wastewater treatment facility pursuant to NPDES Permit No. 2326112. The receiving stream is the Mississippi River.

2. On September 30, 2014, the DNR was notified by a private citizen that on Sunday, September 28, 2014 a pipe was discharging black water into the Mississippi River. The complainant provided photographs of the discharge and a description of the location of the pipe. The DNR determined that the discharge pipe which was described in the complaint and depicted in the photographs was likely to be the outfall from the wastewater treatment facility for Equistar. DNR Field Office #6 emailed the photographs to Emily Venters at Equistar and requested an explanation of the discharge. In response, Equistar confirmed that the discharge had come from Equistar's outfall but indicated that an investigation was necessary to determine the cause of the black water.

3. Later on September 30, 2014, the DNR inspected the Equistar outfall and confirmed that it was the outfall in the photographs. At that time, the effluent was clear and there was no evidence of solids around the outfall or in the river. The area appeared normal at the time of inspection.

4. On October 1, 2014, Equistar notified the DNR that its internal investigation determined that the black water discharged on September 28th was the result of the discharge of bio-solids from the Equistar treatment facility polishing ponds during maintenance activities on the pond. The pond was being pumped on that date and biosolids were pumped out inadvertently. Equistar employees became aware of the discharge on September 28th and ceased discharging at that point.

5. On October 7, 2014, the DNR issued a Notice of Violation to Equistar based upon the failure to provide the DNR with notice of non-compliance within 24 hours and the violation of NPDES permit conditions.

IV. CONCLUSIONS OF LAW

The DNR asserts that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit.

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2. Iowa Code section 455B.173(3) authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems. The Commission has done so at 567 IAC 60 through 69. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. Subrule 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations as established in chapters 61 and 62 of the rules.

3. Discharges of effluent by Equistar are subject to the terms and conditions of NPDES Permit No. 2326112. The permit limit for Total Suspended Solids (TSS) is 82.1 mg/L and/or 1288 lb/day. Because Equistar failed to notify the DNR and did not take any samples of the discharge occurring on September 28, 2014, exact measurements of the effluent are unavailable to determine compliance.

4. Pursuant to 567 IAC 61.3(2)"c", all waters of the state shall be free from materials attributable to wastewater discharges which produce objectionable color, odor or other aesthetically objectionable conditions. The discharge by Equistar on September 28, 2014 caused a violation of this water quality standard.

V. ORDER

The DNR and Equistar hereby agree, and Equistar is hereby ordered, to comply with NPDES Permit No. 2326112. Equistar shall pay a penalty in the amount of \$6,000 within 30 days of the execution of this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at IAC Chapter 567 - 10. Pursuant to this chapter, the DNR is authorized to issue an administrative order with penalties. The DNR may seek additional penalties for noncompliance with this Order or to refer such noncompliance to the Iowa Attorney General for the initiation of a District Court action seeking such penalties and injunctive relief. The administrative penalty assessed to Equistar and has been determined as follows:

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a. Economic Benefit. The DNR asserts that Equistar has achieved some economic benefit from the failure to prevent the discharge of biosolids documented herein. While the discharge of biosolids is not expected to have impacted the cost of maintenance of the polishing ponds, the DNR asserts that additional steps could have been taken to minimize the discharge through additional employee monitoring of the lagoon pumping activities or other detection systems. Equistar disputes this allegation. In order to resolve this matter consensually, a penalty of \$500 is assessed to address avoided for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. In this case a penalty of up to \$10,000 per day is authorized. The Mississippi River at the point of discharge is classified A1 and shall be protected for primary contact recreational use. Primary contact uses are those uses which may result in prolonged and direct contact with the water, involving considerable risk of ingesting water in quantities sufficient to pose a health hazard. The river at that location is also protected for all aquatic life uses and human health uses. These are the highest protections available under Iowa law. Because the DNR was not notified of the unauthorized discharges by Equistar on September 28, 2014 and because Equistar did not take samples of the discharge while the biosolids were present, the DNR could not determine the extent of the risk to human health and the environment nor notify the public of the discharge. . Based upon these considerations, a penalty of \$3,000 is assessed for this factor.

c. Culpability. Equistar was aware of its discharge of biosolids on September 28, 2014 and was aware that the discharge was obvious to citizens on the river in that one of its off-duty employees had observed and reported the discharge. The DNR first learned of the incident from public contacts two days later, rather than from Equistar. Equistar maintains that it held a good faith belief that the event in question was not subject to the reporting requirement because Equistar believed the effluent to be non-toxic in nature. The DNR asserts that Equistar took insufficient actions to notify the DNR and the public after discovery of the discharge. Equistar denies this allegation. In order to resolve this matter consensually, a penalty of \$2,500 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Equistar. By signature to this Order, all rights to appeal this Order are waived.

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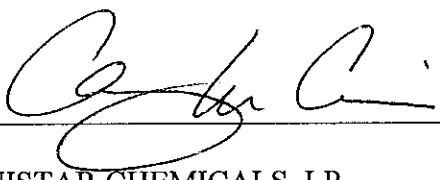
VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 6th day of
April, 2015



EQUISTAR CHEMICALS, LP

Dated this 26th day of
March, 2015

NPDES #2326112; Field Office #6; Jon Tack; EPA; Wendy Hieb, NPDES section; I.B.2.c